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Of Attorneys for Plaintiffs

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF OREGON

JESUS ORNELAS, ANDRES ORNELAS,  
JORGE HERNANDEZ VILLEGAS, and  
AUSTREBERTO CORNEJO,

Civil No.

COMPLAINT

Plaintiffs,

vs.

Fair Labor Standards Act,  
Oregon Wage Laws, Breach of Contract

BUILDING MATERIALS HOLDING  
CORPORATION, a Delaware corporation,  
BMC WEST CORPORATION, a  
Delaware corporation, VILLA  
RODRIGUEZ CONSTRUCTION, LLC, a  
domestic limited liability company,  
CRISTOBAL VILLA, individually, and  
SALVADOR MIRANDA DIAZ,  
individually,

Defendants.

## I. JURISDICTION

1. Jurisdiction is conferred on this Court by 29 U.S.C. § 216(b), as this action arises under FLSA; and 28 USC § 1337, as it arises under an act of Congress regulating commerce.

2. Pursuant to 28 USC § 1367, this court has supplemental jurisdiction of the claims based on Oregon law, as they are so related to claims within the Court's original jurisdiction that they form part of the same case or controversy under Article III of the United States Constitution.

## II. PARTIES

3. Plaintiffs, former employees of defendants, performed labor for defendants at two construction sites located in Hillsboro, Washington County, Oregon.

4. At all times relevant to this action, defendant Building Materials Holding Corporation has been a Delaware Corporation doing business in the State of Oregon.

5. At all times relevant to this action, defendant BMC West Corporation has been a Delaware Corporation doing business in the State of Oregon.

6. At all times relevant to this action, defendant Villa Rodriguez Construction, LLC, has been an Oregon domestic limited liability company doing business in the State of Oregon with its principal place of business in Hillsboro, Oregon.

7. At all times relevant to this action, defendant Cristobal Villa has been an individual doing business in the State of Oregon with his principal place of business in Hillsboro, Oregon. He is a member and registered agent of Villa Rodriguez Construction LLC.

8. At all times relevant to this action, defendant Salvador Miranda Diaz has been an individual doing business in the State of Oregon with his principal place of business in Portland, Oregon.

## V. FACTUAL ALLEGATIONS

9. Defendants employed plaintiffs to provide labor on construction projects in Hillsboro, Oregon.

10. Defendants employed plaintiff Jesus Ornelas from approximately May 22, 2008 to July 18, 2008.

11. Defendants employed plaintiff Andres Ornelas from approximately May 22, 2008 to July 19, 2008.

12. Defendants employed plaintiff Jorge Hernandez Villegas from approximately May 5, 2008 to July 19, 2008.

13. Defendants employed plaintiff Austreberto Cornejo from approximately May 5, 2008 to July 18, 2008.

14. During plaintiffs' employment, each defendant was an enterprise engaged in commerce or engaged in the production of goods for interstate commerce.

15. During the course of their employment, plaintiffs worked in excess of forty (40) hours in at least one work week.

16. In at least one work week, defendants failed to pay plaintiffs time and a half for all hours worked over forty.

17. During the course of their employment, defendants failed to pay plaintiffs Andres Ornelas, Jorge Hernandez Villegas, and Austreberto Cornejo at a rate equal to or greater than \$7.95 an hour.

18. During the course of their employment, defendants failed to pay plaintiffs Andres Ornelas, Jorge Hernandez Villegas, and Austreberto Cornejo wages computed at a rate equal to or greater than \$5.85 an hour.

19. On or about May 5, 2008, defendants Villa Rodriguez Construction, Cristobal Villa, and Salvador Miranda Diaz offered to pay Jorge Hernandez Villegas an hourly wage of \$11.00 for providing labor.

20. Plaintiff Jorge Hernandez Villegas accepted the offer.

21. Plaintiff Jorge Hernandez Villegas was not paid \$11.00 for each hour worked.

22. On or about May 5, 2008, defendants Villa Rodriguez Construction, Cristobal Villa, and Salvador Miranda Diaz offered to pay Austreberto Cornejo an hourly wage of \$10.00 for providing labor.

23. Plaintiff Austreberto Cornejo accepted the offer.

24. Plaintiff Austreberto Cornejo was not paid \$10.00 for each hour worked.

25. On or about May 22, 2008, defendants Villa Rodriguez Construction, Cristobal Villa, and Salvador Miranda Diaz offered to pay Jesus Ornelas an hourly wage of \$16.00 for providing labor.

26. Plaintiff Jesus Ornelas accepted the offer.

27. Plaintiff Jesus Ornelas was not paid \$16.00 for each hour worked.

28. On or about May 22, 2008, defendants Villa Rodriguez Construction, Cristobal Villa, and Salvador Miranda Diaz offered to pay Andres Ornelas an hourly wage of \$11.00 for providing labor.

29. Plaintiff Andres Ornelas accepted the offer.

30. Plaintiff Andres Ornelas was not paid \$11.00 for each hour worked.

31. Defendants' employment of all plaintiffs has terminated.

32. Plaintiffs, though their lawyer, made written request to defendants in September 2008 to be paid their due and unpaid wages in full.



33. Defendants failed, despite repeated requests by plaintiffs, to pay plaintiffs all wages earned upon termination of employment.

34. Plaintiffs, though their lawyer, made written demand for less than \$5,500 each to defendants Villa Rodriguez Construction, Cristobal Villa, and Salvador Miranda Diaz on May 7, 2009 pursuant to ORS 20.082.

## VI. CLAIMS FOR RELIEF

### First Claim – Fair Labor Standards Act

35. Defendants violated 29 U.S.C. § 206(a)(1) by failing to pay plaintiffs Andres Ornelas, Jorge Hernandez Villegas, and Austreberto Cornejo wages at a rate equal to or greater than \$5.85 an hour.

### Second Claim – Fair Labor Standards Act

36. Defendants violated 29 U.S.C. § 207(a)(1) by failing to pay plaintiffs one and one-half times the regular wage rate for hours worked in excess of forty in a work week.

### Third Claim – Oregon minimum wage (ORS 653.025 )

37. Defendants violated ORS 653.025 and OAR 839-020-0010 by failing to pay plaintiffs Andres Ornelas, Jorge Hernandez Villegas, and Austreberto Cornejo wages equal to or greater than \$7.95 an hour.

### Fourth Claim – Oregon weekly overtime (ORS 653.261)

38. Defendants violated ORS 653.261 and OAR 839-020-0030 by failing to pay plaintiffs one and one-half times the regular wage rate for hours worked in excess of forty in a work week.

### Fifth Claim – Failure to pay wages on termination (ORS 652.150)

39. Defendants violated ORS 652.140 and OAR 839-001-0420 by failing to pay plaintiffs

unpaid wages when due upon termination of their employment.

Sixth Claim – Breach of Contract

40. Defendants Villa Rodriguez Construction, Cristobal Villa, and Salvador Miranda Diaz breached their contract with plaintiffs by failing to pay wages as agreed.

VII. PRAYER FOR RELIEF


WHEREFORE, plaintiffs respectfully request that the Court grant them the following relief:

1. On their first claim, unpaid minimum wages, plus an additional equal amount in liquidated damages, to Andres Ornelas, Jorge Hernandez Villegas, and Austreberto Cornejo;
2. On their second claim, their unpaid weekly overtime wages, plus an additional equal amount in liquidated damages.
3. On their third claim, unpaid minimum wages, plus statutory damages of thirty days' wages to Andres Ornelas, Jorge Hernandez Villegas, and Austreberto Cornejo;
4. On their fourth claim, their unpaid weekly overtime wages, plus statutory damages of thirty days' wages;
5. On their fifth claim, statutory damages of thirty days' wages;
6. On their sixth claim, their unpaid contract wages;
7. Pre-judgment interest with respect to their third, fourth, fifth, and sixth claims for relief;
8. Their costs and attorney fees pursuant to 29 U.S.C. § 216(b), ORS 652.200 and ORS 653.055; and

9. Such other and further relief as this Court deems just and proper.

DATED this 16<sup>th</sup> day of June 2009.

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